

Products that qualify as medicines, drugs, or medical appliances are taxed at the reduced low rate of 1% plus applicable local taxes. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

February 14, 2003

Dear Xxxxx:

This letter is in response to your letter dated November 12, 2002. We apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

I would appreciate your informing me of the amount of sales tax levied on food and the amount required on merchandise.

Also, are Illinois residents required by law to pay Illinois tax on shipping and handling charges as required by some out-of-state merchants?

A reply to this inquiry is greatly appreciated.

DEPARTMENT'S RESPONSE:

Please see the enclosed copy of 86 Ill. Adm. Code 130.310 regarding "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sales of food can be subject to either low (1%) or high (6.25%) State rates of tax under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made. Generally, all other types of merchandise are taxed at the high rate applied to sales of general merchandise.

Please note that all sales by retail establishments that provide facilities for on-premises consumption of food are subject to the high rate of tax unless the establishments utilize separate means of collection and physically partition the areas in which food not for immediate consumption is sold, 86 Ill. Adm. Code 130.310(b)(2)(A).

If businesses do not provide facilities for on-site consumption, they must charge the high rate on all food sales if a majority (over 50%) of their gross receipts from food sales is for items sold in a state of preparation for immediate consumption (prepared by the retailer so as to be eaten without substantial delay after the final act of preparation). If a majority of their gross receipts from food sales

is for items sold in bulk, they would charge the low rate on all food sales (except for hot foods, foods prepared by the retailer for immediate consumption, soft drinks and alcoholic beverages).

For your information and reference please find enclosed a copy of the Department's regulation on treatment of transportation and delivery charges under the Retailers' Occupation Tax Act, 86 Ill. Adm. Code 130.415. As the regulation states, transportation and delivery charges, also designated as shipping and handling charges, are not taxable if it can be shown that the charges are agreed to separately from the selling price of the tangible personal property sold and the charges are actually reflective of the costs of shipping. To the extent the transportation and delivery charges exceed the costs of shipping, the charges will be subject to tax.

As noted in subsection (d) of Section 130.415, if the seller and the buyer agree upon the transportation or delivery charges separately from the selling price of the tangible personal property which is sold, then the cost of the transportation or delivery service is not a part of the "selling price" of the tangible personal property personal property which is sold, but instead is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability.

Delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the seller requires a separate charge for delivery and so long as the charges designated as transportation or delivery or shipping and handling are actually reflective of the costs of such shipping, transportation or delivery. To the extent that such charges exceed the costs of shipping, transportation or delivery, the charges are subject to tax.

The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price, is a separate and distinct contract for transportation or delivery. However, documentation which demonstrates that the purchaser had the option of taking delivery of the property, at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

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Associate Counsel

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